

RECEIPT # 56967  
 AMOUNT \$ 150  
 SUMMONS ISSUED 2  
 LOCAL RULE 4.1 \_\_\_\_\_  
 WAIVER FORM \_\_\_\_\_  
 MCF ISSUED 768  
 BY DPTY. CLK. \_\_\_\_\_  
 DATE 6-9-04

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASSACHUSETTS

FILED  
 IN CLERKS OFFICE

2004 JUN -9 P 12:33

U.S. DISTRICT COURT  
 DISTRICT OF MASS.

CENTENNIAL INSURANCE  
COMPANY,  
 Petitioner,  
 v.  
 EAST ATLANTIC  
 CONSTRUCTION, INC., AND  
 STERLING EQUIPMENT, INC.,  
 Respondents.

Civil Action No.

04 - 11272 NG

CENTENNIAL'S PETITION FOR DECLARATORY JUDGMENT ~~MAGISTRATE JUDGE~~ Alexander

NOW COMES the Petitioner, Centennial Insurance Company (hereinafter referred to as "Centennial"), in the above entitled action, by and through its undersigned attorneys, Holbrook & Murphy, and respectfully petitions this Honorable Court as follows:

FIRST

The Petitioner, Centennial, at all material times herein, was, and now is a corporation duly organized and maintaining a place of business in Madison, New Jersey.

SECOND

The Respondent, East Atlantic Construction, Inc., is a New Jersey corporation that agreed in the applicable charter parties that there would be jurisdiction in the Commonwealth of Massachusetts before the American Arbitration Association in the event of a dispute.

THIRD

The Respondent, Sterling Equipment, Inc., is a Massachusetts corporation with a principal place of business in Boston, Massachusetts.

FOURTH

This is an action for a declaratory judgment in accordance with Title 28 U.S.C. §§2201-2202 to determine, *inter alia*, whether the alleged damage to the barges falls within the coverage of the above policy. This is a case of actual controversy in that there is a claim against the said policy.

FIFTH

Jurisdiction for this action on a contract of marine insurance lies within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1333.

SIXTH

Sterling, a loss payee under the policy issued by Centennial has made claim for the alleged damage from Centennial and has inquired as to whether Centennial will defend East Atlantic in the case captioned, *Sterling Equipment, Inc. v. East Atlantic Construction, Inc.*, Civil Action No. 02-11793-NG.

SEVENTH

Some of the alleged damage occurred while the policy was in effect, but not due to covered perils. Some of the alleged damage occurred beyond the policy period, in other words, after the policy was canceled. Further, the present action is not concerning damage or injury to third parties, but to the barges themselves.

WHEREFORE, the Petitioner, Centennial Insurance Company, prays:

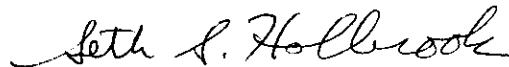
1. That process in due form of law according to the practice of this Honorable Court in admiralty and maritime jurisdiction, may issue against the respondents citing them to appear and answer on oath all and singular the matters aforesaid; and

2. That this Honorable Court enter a declaratory judgment declaring the following:

- a. Centennial owes no duty to defend East Atlantic in the case captioned, *Sterling Equipment, Inc. v. East Atlantic Construction, Inc.*, Civil Action No. 02-11793-NG.
- b. Some or all of the alleged damages did not occur as a result of a covered peril(s).
- c. Some or all of the alleged damage did not occur within the time period the policy was in effect.
- d. Sterling has no cause of action as a loss payee against Centennial.
- e. Centennial is not responsible to the respondents on such policy reasons that will come to light during discovery and/or trial.

3. That the petitioner, Centennial, have such other and further relief as may be deemed just and proper to the Court in these premises.

CENTENNIAL INSURANCE COMPANY  
By its attorneys,



Seth S. Holbrook, BBO # 237850  
HOLBROOK & MURPHY  
150 Federal Street, 12<sup>th</sup> Floor  
Boston, MA 02110  
617-428-1151

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) \_\_\_\_\_

Centennial Insurance v. East Atlantic

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950
- ✓ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

Sterling Equipment v. East Atlantic - 02-11793 NG

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

see # 3

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST?
- No

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) \_\_\_\_\_

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284?
- No

7. DO
- ALL
- PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (
- WORCESTER COUNTY
- ) - (SEE LOCAL RULE 40.1(C)). YES
- n/a
- OR IN THE WESTERN SECTION (
- BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES
- )? - (SEE LOCAL RULE 40.1(D)). YES
- n/a

8. DO
- ALL
- OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES
- n/a
- (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE?
- n/a

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE?
- Eastern

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION
- n/a
- OR WESTERN SECTION \_\_\_\_\_

(PLEASE TYPE OR PRINT)  
ATTORNEY'S NAMESeth S. Holbrook

ADDRESS

Holbrook & Murphy, 150 Federal St., Boston, MA 02110

TELEPHONE NO.

617-428-1151

JS 44  
(Rev. 07/89)

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I (a) PLAINTIFFS

Centennial Insurance  
Company(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF New Jersey  
(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANTS

East Atlantic Construction  
Inc., Sterling Equipment, Inc.  
U.S. DISTRICT COURT  
DISTRICT OF MASS.COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT New Jersey  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
TRACT OF LAND INVOLVED

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Seth S. Holbrook  
Holbrook + Murphy  
150 Federal St.  
Boston, MA 02110  
617-428-1151

## ATTORNEYS (IF KNOWN)

Sterling  
Norman Peloguin  
460 County St.  
New Bedford, MA 02740

## II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question  
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

28 U.S.C. 2201 - Declaratory Judgment  
Action to determine marine insurance coverage.

## V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input checked="" type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 861 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395a) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 SSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7608	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Selective Service <input type="checkbox"/> 490 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 691 Agricultural Acts <input type="checkbox"/> 692 Economic Stabilization Act <input type="checkbox"/> 693 Environmental Matters <input type="checkbox"/> 694 Energy Allocation Act <input type="checkbox"/> 695 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

## VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION  
☐ UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

(See instructions)

Sterling Equip v. East Atlantic  
02-11793 NG JUDGE Nancy Gertner DOCKET NUMBER 02-11793

DATE

6-9-04

SIGNATURE OF ATTORNEY OF RECORD

Seth S. Holbrook